

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/02/2004

CORAM

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

Second Appeal No. 102 of 2004

and

C.M.P. No. 257 of 2004

Ammani ... Appellant

-Vs-

The Tiruchengode Municipality

rep. by its Commissioner

Tiruchengode Municipality

Tiruchengode Town

Namakkal District ... Respondent

Appeal under Section 100 CPC against the Decree and Judgment passed in A.S. No. 361 of 2002 dated 18-02-2003 on the file of Principal District Judge, Namakkal confirming the Judgment and Decree passed in O.S. No. 550 of 1994 dated 23-08-2002 on the file of District Munsif Court, Tiruchengode.

!For appellant : Mr. S. Kamadevan

:JUDGMENT

The Plaintiff, who has lost before both the courts below is the appellant. The appellant filed the suit O.S. No. 550 of 1994 on the file of District Munsif Court, Tiruchengode for permanent injunction against the respondent herein, which was dismissed on 23-08-2002. The appellant has filed first appeal A.S. No. 361 of 2002 which was also dismissed on 18-02-2003, hence this second appeal.

2. It is the case of the appellant that she purchased the suit property namely house site under Ex.A2, sale deed dated 17-01-1994 and obtained Patta in her name from the revenue authorities. The sale deed was executed by power of attorney of one Paramasivam. Later, she has mortgaged the suit property with District Centre, Namakkal. The respondent/Municipality attempted to interfere with the peaceful possession and enjoyment of the appellant under the pretext that the said Paramasivam executed a settlement deed under Ex.A4 dated 05-10-1994 settling the suit property in favour of the

respondent. It is canvassed by the appellant that the settlement deed was executed long after the sale deed was executed in her favour.

3. The contention of the respondent is that the said Paramasivam was owner of large extent of land comprised in Survey No. 167/1 and 179/3. The said Paramasivam applied for layout sanction with the Town and Country Planning authorities, Salem. In the said plan, Plot Nos. 20 and 21, which is the suit property were set apart for public purpose. The said plan was approved after following the rules and regulations in L.P./R (S.C) No. 26/82 in Na.Ka. No.1391.82 L.3 dated 27-05-1982. The said plan was altered by the said Paramasivam and a new plan has been approved in L.P./R (S.C) No. 48/82. In the said L.P./R (S. C.No. 48/82, the said two plots have been reserved for public purposes. As mentioned above, plot No.21 is the suit property. After approval of the layout, it is not open to the said Paramasivam to alienate either Plot No.20 or Plot No.21 since it was set apart for children play space. In virtue of the said sanctioned plan, the said two places were placed at the disposal of the respondent for the said public purposes. When the vendor namely Paramasivam has lost his right in the suit property, it is not open to the power of attorney agent namely Sakthivel to execute the sale deed in favour of the appellant herein.

4. Before the trial court the appellant herein examined herself as PW1 and one Palanivel as PW2 and Somasundaram as PW3 and marked Exs. A1 to A9. The respondent Municipality examined one Thangamani as DW1 and marked Exs. D1 to D14. The trial court after framing necessary issues and on proper consideration of the oral and documentary evidence has dismissed the suit. Aggrieved by the dismissal of the suit, the appellant has filed first appeal which was also dismissed after hearing both sides.

5. Mr. Kamadevan, learned counsel appearing for the appellant submitted that the appellant established her title to the suit property under Ex.A2 and also by continuous possession of the suit property under Exs. A3, A5 to A7, while so, the courts below are not justified in dismissing the suit. The Courts below ought not to have gone deep into the aspect of the title since the suit is only for bare injunction; that the courts below ought not to have declared the sale deed, Ex. A2 as null and void taking into account of the settlement deed under Ex.A4. The courts below are not justified in holding that the Vendor of the plaintiff has no title at the time of execution of the sale deed when admittedly the Municipality has got the right over the property only under Ex.A4 which is long after Ex.A2.

6. It is canvassed before the courts below that Paramasivam submitted Ex.B1 dated 30-01-1987 for approval of 21 house plots to the Town and Country Planning authorities, Salem. 1/10th area was to be kept allotted for the public park, play ground and school etc., Ex.B2 is the first approved plan. As Paramasivam requires some alteration, he submitted another plan which was approved under Ex.B4 dated 04-10-1982 with some conditions. Ex.B5 is undertaking given by Paramasivam stating that he will provide Plot No. 20 and 21 for public purpose. The respondent issued notice Ex.B6 dated 04-10-1983 calling upon Paramasivam to execute the settlement deed within seven days. Later, the respondent issued various notices under Exs. B7 to

B10 on different dates to Paramasivam. Ex.B11 to B14 are letters of undertaking sent by Paramasivam agreeing to handover the road and vacant space.

7. Paramasivam executed Ex.A4, settlement deed on 05-10-1994.

Paramasivam appointed his son as power agent under Ex.A1 dated 07-04-1993, who sold plot No. 20 the suit property under Ex.A2 dated 17-01-1994 to appellant herein. No doubt, the appellant has sunk borewell and obtained Patta along with other plot owners under Ex.A3. Ex.A5 is the field map pertaining to the suit property and Ex.A6 is the town survey extract. The appellant mortgaged the property under Ex.A7 and raised a loan for construction. Exs. A8 and A9 are parent title deeds relating to the suit property.

8. Privity of contract between Paramasivam and respondent is not denied. Layout was sanctioned in favour of the colonizer namely Paramasivam with certain conditions that he should reserve Plot No.20 and 21 for public purpose. Paramasivam also submitted an application seeking permission to sell Plot No. 20 and 21 stating that he became financially poor and unable even to maintain his family. The said application was rejected by the respondent/ Municipality.

9. The main pleas of the appellant before the trial court is that Ex.A2 is earlier in point of time than the Ex.A4, Gift Deed. Ex.A4 executed by the vendor in favour of the appellant is not valid since it violates Section 122 of the Transfer of Property Act. In other words, Ex.A4 was not executed voluntarily or unfettered free will. After execution of sale deed Ex.A2, the vendor has not retained anything to transfer under Ex.A4. Both the courts below rejected the plea of the appellant in toto.

10. In the decision reported in (Pt. Chet Ram Vashist (dead) by LR's Vs. Municipal Corporation of Delhi) AIR 1995 Supreme Court Page No.4 30 wherein the Honourable Supreme Court held that reservation of land in respect of approved layout does not create any right or interest for the Corporation in the land so specified, however the land reserved cannot be dealt with by the owner except in conformity with the order of the authority. In other words, it imposes a bar on exercise of power by the owner in respect of the land reserved. Reserving any site for any street, open space, park, School etc., in a layout or plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be the legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it.

11. In similar circumstance S. Jagadeesan, J held in the decision reported in (Elumalai and 11 others Vs. Corporation of Madras, rep. by its Commissioner, Rippon Buildings, Madras-3 and others) 2002-3-Law Weekly-180 that the place earmarked for public park in the approved layout should not be changed or permitted to be used to establish Kerosene Bunk and the promotor or

the Government authority are expected to maintain the lands for that purpose and it cannot be utilised for any other purpose. The said judgment was made following the decision of the Honourable Supreme Court reported in (Bangalore Medical Trust Vs. B.S. Muddappa) AIR 1991 SC 1902 wherein it was held, considering the provisions of Bangalore Development Act that permission granted by the authorities to construct the hospital in the place earmarked for a public park is illegal..

12. One another Judgment was followed by S. Jagadeesan, J reported in (M.I. Builders Private Limited Vs. Radhey Shyam Sahu) 1999 6 SCC 46 4 wherein the Honourable Supreme Court held that allowing construction of under ground shopping complex in the park not only violates the statutory provisions but also public trust doctrine.

13. The appellant's plan was sanctioned subject to the conditions imposed by the respondent. He did not raise any objection immediately. Indeed, he made a representation seeking permission of the respondent to sell it, which was also rejected. The effect of the reservation is that the owner ceases to be the owner and he holds the land for the benefit of the society as a Trustee and execute the gift deed in discharge of the functions. Hence, the provisions of Section 122 of the Transfer of Property Act cannot be applied here.

14. The other plea of the learned counsel Mr. Kamadevan is that the appellant is in lawful possession pursuant to Ex.A2 as such taking into consideration of possession as on the date of suit, the courts below ought to have granted decree as prayed for.

15. The prayer sought for in the suit is in the nature of perpetual injunction. The perpetual injunction forbids defendant to do a wrongful act which would be infringement of some right of the plaintiff legal or equitable. Injunction is a specific order of the Court forbidding the commission of a wrong threatened or the continuance of a wrongful course of action.

16. The relief of injunction, whether temporary or permanent is granted at the discretion of the Court. Section 41 of Specific Relief Act 1963 contemplates when injunction is to be refused (which is equivalent to Section 56 of the 1877 Act).

Section 41. Injunction when refused- An injunction cannot be granted:-

- (a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings:
- (b) to restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that from which the injunction is sought
- (c) to restrain any person from applying to any legislative body:
- (d) to restrain any person from instituting or prosecuting any

proceeding in criminal matter

(e) to prevent the breach of a contract the performance of which would not be specifically enforced:

(f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance

(g) to prevent a continuing breach in which the plaintiff has acquiesced:

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust:

(i) when the conduct of the plaintiff or his agents has been such as to disentitle him to assistance of the Court:

(j) when the plaintiff has no personal interest in the matter.

17. This section gives a list of cases in which perpetual injunction cannot be granted. The sub-section (i) implies that a person who seeks injunction must come to the Court with clean hands. If he acted in an unfair or unequitable manner, he cannot have relief. In this case, the appellant's vendor after leaving plots for public purposes obtained sanction to the layout contravention of the same it is sold to the appellant. Such conduct cannot entitle them to any relief at the hands of a Court of equity. Hence, the argument that the appellant is in lawful possession and entitled to injunction cannot be accepted.

18. I do not find any question of law, much less substantial question of law involved in this second appeal.

19. For the foregoing reasons, the second appeal fails, liable to be dismissed and accordingly dismissed. No costs. Connected CMP is closed.

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Index : Yes

Internet : Yes

To

1. The Principal District Judge
District Court
Namakkal

2. The District Munsif
District Munsif Court
Tiruchengode.

3. The Commissioner
Tiruchengode Municipality
Tiruchengode Town

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